

REMARKS

As a result of this amendment, claim 38 is amended and claims 39 and 40 are newly added. Claims 33-40 are now pending in this application. In the Action of March 3, 2004, claims 33-37 were rejected and claim 38 was indicated to be allowable if rewritten in independent form. This amendment recasts claim 38 pursuant to this indication.

A detailed response to the rejection follows. However, applicant reserves all applicable rights not exercised in connection with this response, including, for example, the right to swear behind one or more of the cited references, the right to rebut any tacit or explicit characterization of the references, and the right to rebut any asserted motivation for combination. Applicant makes no admission regarding the prior art status of the cited references, regarding them only as being of record in the application.

Unacknowledged Information Disclosure Statements

Applicant submitted a Supplemental Information Disclosure Statement and a 1449 Form on January 27, 2004, which is not acknowledged in the present Action. Applicant respectfully requests acknowledgement and full consideration of the references cited therein.

Additionally, applicant submitted an Information Disclosure Statement and associated 1449 Form on July 10, 2003. Although this Statement is acknowledged in the present Action via an initialed 1449 Form, several references were not indicated as considered by the Examiner. Specifically, U.S. Patent 5,468,984, EP 0851446, WO 99/51301, WO 99/51302, WO 99/51303 and 99/66985 were not initialed. These references were previously cited by or submitted to the U.S. Patent Office in applicant's prior U.S. application, Serial No. 09/884,864, filed on June 19, 2001, which is relied upon for an earlier filing date under 35 U.S.C. §120.

Thus, applicant requests respectfully that the Examiner fully consider these references and return an updated copy of the 1449 Form.

Response to §103 Rejection

Claims 33-37 were rejected under 35 USC § 103(a) as allegedly unpatentable over Greenwood, Jr. (U.S. Patent 5,949,638). In response, applicant submits respectfully that the Actions does not set forth a proper prima facie case of obviousness.

Specifically, the Action concedes that Greenwood lacks any express teaching regarding “the use of sufficient force to establish electric contact of two or more of the conductive ribbons through their respective insulative coatings,” but asserts that it would have been obvious ... to do so because one apparently would want to reduce “internal resistance between the conductive ribbons” and because “Greenwood also discloses that the different anode layers can engage along the irregular oxide, at least in some locations there is breaking through the oxide (see col.4, lines 20-34).

However, no evidence is provided to substantiate that one of skill at the time of invention would have regarded Greenwood as needing a reduction in the electrical resistance between its conductive ribbons. Indeed, Greenwood itself reports that its internal resistance is acceptable. See, for example, column 4, lines 7-12, where Greenwood states: “To increase anode efficiency applicants have found it is preferred to use a porous anode and particularly to use a layered arrangement of porous anodes which enable access to inner anode surfaces for an acceptable internal resistance.”

The law requires that a prima facie case of obvious must include objective prior art teachings that one of skill would have found it desirable to make the proposed combination or modification. Here, the Action fails to substantiate that one of ordinary skill would have recognized it desirable to modify Greenwood to reach the invention specified in claims 33-37. And more importantly, Greenwood itself one appear to expressly dissuade one of skill from attempting to further reduce internal resistance.

Moreover, applicant submits respectfully that the citation to column 4, lines 20-34 also does not appear to support the rejection. The Action cites this passage as disclosing that “the different anode layers can engage along the irregular oxide, at least in some locations there is breaking through the oxide.” However, in studying the passage, it appears devoid of any reference or connotation of intentional breaking through oxide to provide any electrical contact. It does however, state, at lines 24-34, “that even when a break occurs in the porous anode foil during winding, the irregular oxide comprising surface of the solid core anode engaging along the irregular oxide surface of a porous anode foil provides sufficient **grip** to prevent assembly process failure. Thus, even though a continuity break of the brittle porous anode foil may occur, the assembly process is not disrupted and the broken porous foil remains in engaging relationship

with a continuous surface of solid core anode foil.” It seems that one of ordinary skill would have regarded this passage as referring to the frictional or mechanical contact of the brittle anode with solid core anode as a means of gripping any portions of the brittle anode that might accidentally break. Further, it seems that one of ordinary skill would not regard any portion of this passage as teaching a deliberate attempt to apply sufficient force to break through the insulative layer.

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the rejections based on the unsubstantiated modification of Greenwood.

Conclusion

In view of these remarks, applicant requests respectfully that the Examiner reconsider and withdraw the rejections. Additionally, applicant invites the Examiner to telephone its patent counsel Eduardo Drake at (612) 349-9593 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

MICHAEL J. O'PHELAN ET AL.

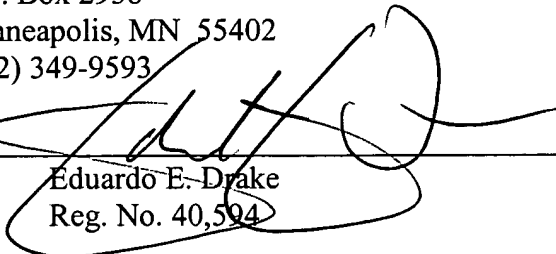
By their Representatives,

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Date

3 June 2004

By


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, MS: Amendment, P.O. Box 1450, Alexandria, VA 22313-1450 on this 3 day of June, 2004.

Paula Sieny

Name

Paula Sieny

Signature